IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT

JODHPUR

: J U D G M E N T :

AJAY GIRI VS. STATE OF RAJASTHAN

D.B. CRIMINAL APPEAL NO. 1035/2003
against the judgment dated 30.8.2003 passed by the learned Additional Sessions Judge (Fast Track), Hanumangarh in Sessions Case No.63/2003 (State Vs. Ajay Giri)

****

DATE OF JUDGMENT :: 26th APRIL, 2006

PRESENT

HON'BLE MR. N.N. MATHUR, J.
HON'BLE MR. MANAK MOHTA, J.

Mr. H.S. Sandhu, for the appellant.
Mr. V.R. Mehta, Public Prosecutor.

BY THE COURT : (PER HON`BLE MANAK MOHTA, J.)

1. The instant appeal is directed against the judgment of conviction and sentence dated 30.8.2003 passed by learned Additional Sessions Judge (Fast Track), Hanumangarh in Sessions case No.63/2003 whereby the accused-appellant has been convicted for the offence under Section 302 I.P.C. and has been sentenced to undergo imprisonment for life and to pay a fine of Rs.1000/-, in default of payment of fine, further to undergo one month's additional rigorous imprisonment, for the offence under Section

4/25 (1-B)(b) of Arms Act the appellant has been convicted and sentenced to one year's rigorous imprisonment and a fine of Rs.1000/-, in default of payment of fine, further to undergo one month's additional rigorous imprisonment.

2. The prosecution case, as disclosed during trial, is that on 19.5.2002 complainant-Bharat Kumar (PW-2) lodged a written report (Exhibit-P/4) at P.S. Hanumangarh Town alleging inter alia that on 18.5.2002 at about 11:00 in the night, when he came outside from his house located at Bhatta Basti, Barkat Colony for call of nature, at that time, he saw Ajay stabbed two knife injuries to Kailash. He tried to catch Ajay but he ran away alongwith knife. On his shouting, Subash, Laxman and Ganeshi Das came there. He further states that while Ajay was running, he fell down and received head injury but the accused manage to escape. Thereafter, injured-Kailash was lifted to government hospital, where doctor declared him dead. He further stated that due to enmity Ajay killed Kailash with the aid of knife.

3. On the basis of this report, a case for the offence under Section 302 I.P.C. was registered and an FIR No.218/02 was chalked out and the investigation commenced. The statements of witnesses were recorded and other legal formalities were carried

out. Post-mortem of dead-body was conducted by Dr. Jai Pal (PW-7). The accused-appellant was arrested on 20.5.2002 and at his instance knife was recovered vide Exhibit-P/24 and sealed on the spot. Police also recovered blood-smeared clothes of the appellant. After completion of usual investigation, a charge-sheet was filed in the court and thereafter the case was committed to the trial court where charges were framed under Section 302 I.P.C. and 4/25(1-B) (b) of the Arms Act and were read over to accused-appellant, to which he pleaded not guilty and claimed trial.

4. The prosecution in support of its case examined as many as 10 witnesses, namely, PW-1 Laxman Das, PW-2 Bharat Kumar, PW-3 Suresh Kumar, PW-4 Lalu Das, PW-5 Subash, PW-6 Ganeshi Das, PW-7 Dr. Jaipal, PW-8 Ram Pratap, PW-9 Mahendra Singh, and PW-10 Pahad Singh and got exhibited certain documents as Exhibit-P/1 to Exhibit-P/30. The accused-appellant in his statement recorded under Section 313 Cr. P.C. denied the correctness of prosecution evidence appearing against him and claimed to be innocent and stated that he has been falsely roped in this case. He further stated that he alongwith Kumar Bharti were going to meet his brother-in-law Sunder, at that time, Kailash attacked with lathi on his head and he fell down, Kailash sat over him with knife, Kumar Bharti tried to snatch the knife from hand of Kailash and in

that scuffle, Kailash received knife blow on his chest. He also stated that thereafter Kumar Bharti gave another knife blow on the back of injured-Kailash and saved his life. He rushed to Police Station and narrated the whole incident to the police but the police did not lodge his report. In defence, no witness was produced but he got exhibited certain documents as Exhibit-D/1 to Exhibit-D/2.

5. After hearing the parties, the learned trial court found the prosecution case proved against the accused-appellant beyond all reasonable doubts, turned down the defence version and held the appellant guilty for committing murder of Kailash. The learned court convicted and sentenced the appellant as mentioned above vide judgment dated 30.8.2003. Hence, this appeal has been filed.

6. We have heard Mr. H.S. Sandhu, learned counsel for the appellant, learned Public Prosecutor for the State Mr. V.R. Mehta and have carefully gone through the record of the case.

7. During the course of arguments, learned counsel for the appellant submitted that the learned trial court has not properly considered and appreciated the material available on record and has given erroneous finding with regard to the guilt of accused-appellant, which deserves to be rejected. Learned counsel for the

appellant further contended that in this case, no independent witness has been produced and the conviction of the accused is solely based on the statement of PW-2 Bharat Kumar but it was urged that his statement is not of trustworthy nature. Other witnesses, namely, PW-1 Laxman Das, PW-3 Suresh, PW-4 Subash and PW-6 Ganeshi Das are not the witnesses of occurrence and their statements are not corroborating the prosecution story. It was also contended that the recovery of knife is also fake and concocted. The accused was arrested on 19.5.2002 but recovery of knife has been shown on 21.5.2002. Thus, that does not inspire confidence and, therefore, that recovery cannot be taken as an incriminating circumstance against the appellant. The learned counsel for the accused-appellant submitted that as per arrest memo (Exh.P/22), the accused was having injuries over his body at the time of arrest but the prosecution has not been able to explain these injuries. As per the defence version, these injuries were caused by deceased. Thus, the prosecution story is not free from doubts and it can be inferred that the incident has not happened in the way it has been stated. Further the learned counsel submitted that the prosecution has not been able to prove strong motive to commit crime by the accused which is essential in each case otherwise the prosecution story remains doubtful. It was also contended that the alleged injuries were caused by knife but as per the medical report and the

statement of doctor (PW-7) the injuries were shown as punctured wound and such injuries cannot be caused by knife and further the injuries are not corroborated by the statements of witnesses. PW-7 Dr. Jaipal has failed to prove that such injuries can be caused by knife. It was also contended that the FIR is also lodged at a delay of about 2 hours and the FIR is written at the instance of police. Thus, that is not the true version and inspire no confidence. The learned counsel for the appellant also challenged the conviction of accused under the Arms Act. It was contended that the length of knife has been shown 16 Cms that is less then the requisite length of 9" as provided in Clause (v) of the Schedule attached to Arms Rules of 1962. Thus no charge of Arms Act is sustainable. The learned counsel for the appellant has also placed reliance on (1) Mohar Singh Vs. State of Punjab AIR 1981 SC 1578, (2) Kathi Odhabhai Bhimabhai & Ors Vs. State of Gujarat 1993 Crl. L.J. 187, (3) Patori Devi & Anr. Vs. Amar Nath & Ors AIR 1988 SC 560 and (4) Masra & Others Vs. State 2002(2) Cr. L.R. (Raj.) 403. On the above submission, it was prayed that the prosecution has not been able to prove guilt of accused-appellant beyond reasonable doubts, as such the appellant deserves to be acquitted. On the other hand, learned Public Prosecutor refuted the contentions placed by the counsel for the accused-appellant and supported the judgment of trial court. He further submitted that the prosecution has proved its

case beyond all reasonable doubts against the appellant. PW-2 Bharat Kumar is an independent and natural witness. Other witnesses, namely, PW-1 Laxman, PW-3 Suresh, PW-4 Subash and PW-6 Ganeshi Das reached the spot just after the occurrence and out of them, PW-1, PW-5 and PW-6 have seen the accused and he was having blood-stained knife in his hand. Knife (Art.7) was recovered at the instance of accused. No evidence has been produced in support of defence version. The prosecution witnesses have stated that when the accused was running, he fell down and received injuries. PW-7 Dr. Jaipal has explained the position of injuries. Thus, the finding of guilt is to be maintained and the appeal may be disallowed.

8. Before adverting to the contentions raised by the learned counsel for the appellant, it would be just and proper to briefly survey the oral evidence adduced by the prosecution :

9. **PW-1 Laxman Da**s stated that in his neighbourhood marriage ceremony at the house of Guru Das was going on. He alongwith Subash were standing there, at that time, Ganeshi Das had come there to enquire about the whereabouts of his son-Kailash. On hearing shouts, they rushed towards the scene of occurrence and saw Ajay Giri was having blood-stained knife in his

hand. Kailash was lying on the ground and was having knife injuries on his chest and back and blood was coming out from the injuries. On seeing them, Ajay Giri tried to run away and while running he fell down and sustained injuries but he again got up and ran away. Thereafter they lifted injured-Kailash who was lying in an unconscious condition to hospital, where the doctor declared him dead. He further stated that on the eve of 'Holi', Ajay Giri tried to catch hold a girl, which was resisted by Kailash and on that count Ajay Giri was having enmity. Fard-Surat Haal Lash (Exh.P/1), Panchayatnama (Exh.P/2), site-plan (Exh.P/3) which were prepared by the police bear his signatures as A to B. In cross-examination he has denied the suggestion that the deceased-Kailash mounted assault on Ajay Giri and during that scuffle, Kumar Bharti stabbed with knife to Kailash.

10. **PW-2 Bharat Kumar** is the eye-witness of occurrence and is the person who lodged the FIR. He stated that in the night of 18.5.2002 at about 11 p.m. when he came out from his house for passing out urine, at that time, he saw Ajay Giri stabbing Kailash on his chest and back, upon which he raised shouts, on hearing the commotion, neighbourers, namely, Laxmi Das, Ganeshi Das and Subash came there. All of them ran behind Ajay Giri to catch hold him but he ran away and managed to escape. The injured was

shifted to hospital in a taxi where doctor declared him dead. Exh.P/4 is the information given by him to police which bears his signature A to B. At Police Station alongwith him Ganeshi Das went. The FIR (Exh.P/5) bear his signature A to B. Police drew site plan (Exh.P/3) in his presence, on which his signatures are C to D. Fard-Surat Haal Lash and Panchayatnama was prepared by the police in his presence. At hospital Police recovered blood-stained cloths of Kailash (deceased) vide Exh.P/6 which bear his signature A to B. His own blood-stained cloths too were taken and sealed on the spot by the police vide Exh.P/7 as they were having blood stains over it. Exh.P/8 which is the fard of blood-smeared soil contains his signature A to B. He further stated that at the time of 'Holi', accused-Ajay Giri caught a girl, to which Kailash resisted and on that count he was having enmity. In cross-examination this witness has stated that Ajay Giri caused two knife blows. He further stated that when Subash, Ganesh Das and Vishnu Das came on hearing the commotion, at that time, accused-Ajay Giri had gone to a distance of 20-25 feet from the place of occurrence. Application (Exh.P/4) which is in the handwriting of Laxmi Das, has been written at the Police Station. Ajay Giri was arrested on the next day morning of the date of occurrence by the police and at his instance knife was recovered. In cross-examination he denied the defence version that deceased-Kailash

caused lathi blow to Ajay Giri and in the right of private defence Kumar Bharti stabbed Kailash.

11. **PW-3 Suresh Kumar** is the neighbourer. He stated that on 18.5.2002 there was a marriage celebration going in their neighbourhood and he was at his house. At 11 'O clock in the night, he heard some shouts, upon which, he came out of house. At that time he saw Kailash was lying in an injured condition in the street.

12. **PW-4 Lalu Das** is the motbir of recovery of knife. He stated that Ajay Giri took out the knife from 'almirah' of his room and gave it to the police, which as sealed by the police on the spot and thereafter the police prepared papers, which bears his thumb-impression. Police has also made recovery of cloths of Ajay Giri at his instance and sealed them. He has deposed in cross-examination that his thumb impressions were obtained on the memos pertaining to recovery of knife and cloths.

13. **PW-5 Subash** stated there was a marriage ceremony at Ghuran Das's house and they assembled alongwith Laxman and Ganeshi Das. There at 11 'O clock, they heard shouts from the side of Bharat Kumar's house. On this, he, Laxman and Ganeshi Das went towards the house of Bharat Kumar. A little ahead of house of

Bharat Kumar near the corner of house of Suresh Kumar, Kailash was seen lying unconscious with blood coming out from injuries. At that time, Bharat Kumar was shouting 'Chaku Marr diya ... Chaku Marr diya'. At that time Ajay Giri was standing there having blood-stained knife in his hand. He tried to catch hold Ajay Giri but he ran away. Thereafter they lifted Kailash to hospital in a taxi where the doctor declared him dead.

14. **PW-6 Ganeshi Das** is the father of deceased-Kailash. He stated that in the night of 18.5.2002 he went in search of his son Kailash at the house of Ghuran Das where marriage ceremony was going on. Thereafter he heard noise of 'maar diya ... maar diya' than they went towards the house of Bharat Kumar where Kailash was seen lying in an injured condition in a pool of blood and Ajay Giri was standing having blood-stained knife in his hand. At that time, Bharat Kumar was shouting that Ajay Giri stabbed Kailash. Thereafter they tried to catch hold Ajay Giri but he ran away and while running he fell down and received injuries. He got up and again ran away and could not be caught. Kailash was taken to hospital but he was declared dead by doctor. He further stated that he alongwith Bharat Kumar lodged report (Exh.P/4) with the police. Police came at the site in the morning. He has also stated that police arrested Ajay and knife was recovered by the police.

15. PW-7 is Dr. Jaipal who conducted the post-mortem on 19.5.2002 of dead-body of Kailash. He stated that he found the following injuries on the dead-body :

1. Punctured wound 1½''x 1''x cavity deep present on the Left Nipple Region.
2. Punctured wound 1'' x 1 ½''x bone deep on the upper part of abdomen. Posteriorly right side near the vertebral column.

In his statement, he has further narrated the gravity of injuries and stated that these injuries were ante-mortem in nature and were sufficient to cause death. Post-mortem report (Exh.P/9) bears his signature A to B. He further stated that on a query being made by police that whether punctured wound can be possible by a sharp-edged weapon is inflicted and thereafter that weapon is taken back from wound, upon which, the doctor gave his opinion on letter (Exh.P/10) "that is possible". The note on Exh.P/10 bear his signature A to B and note is C to D. In cross-examination he has admitted that there is difference between punctured wound and stab wound.

16. **PW-8 Ram Pratap and PW-9 Mahendra Singh** are the witnesses relating to Malkhana and carrier. PW-8 stated that he was the In-charge Malkhana. He stated that on 19.5.2002 four sealed packets and on 21.5.2002 two sealed packets were given by the SHO-Pahad Singh and he made entry in Malkhana Register that

is Exh.P/11 and Exh.P/12. The articles remained intact with him. On 29.5.2002, he handed over the sealed packets marked A, B, C D, E and F to Mahendra Singh for depositing to FSL at Jodhpur. PW-9 Mahendra Singh stated that he received six sealed packets from PW-8 and deposited them at FSL, Jodhpur and obtained receipt (Exh.P/13).

17. **PW-10 Pahad Singh** in the SHO and Investigating Officer of this case. He has deposed that on 19.5.2002 he was posted as SHO, P.S. Hanumangarh Town. On that day, Exh.P/4 was presented by Bharat Kumar and Ganeshi Das (father of deceased) and on that FIR No.218/02 (Exh.P/5) was chalked out. During the course of investigation, he recorded the statements of witnesses. Fard Surat Haal Lash (Exh.P/1) and Panchayatnama (Exh.P/2) were prepared in presence of witnesses. The blood-stained cloths of deceased-Kailash and that of the first informant-Bharat Kumar were recovered and sealed vide Exh.P/6 and Exh.P/7 respectively. The post-mortem of deceased was got conducted by doctor. He has also stated that he inspected the site and prepared site-plan (Exh.P/3). The accused was arrested on 20.5.2002 vide Exh.P/22. The information with regard to recovery of knife was given by accused vide Exh.P/23 and as per the information, blood-stained knife was recovered at the instance of accused vide Exh.P/24 in the presence

to two 'motbir' witnesses, namely, Lalu Das and Sharvan. He has also stated that the accused also gave information with regard to recovery of blood-stained cloths and they were recovered and at his instance and sealed Fards–Exh.P/26 to Exh.P/28 were prepared. The sealed articles were deposited in Malkhana and later on they were sent to FSL, Jodhpur and the result thereof is Exh.P/30. He has deposed that he has narrated the injuries found on the body of accused at the time of his arrest in the arrest memo Exh.P/22. He denied the suggestion that he dictated the report to Bharat Kumar.

18. Before appreciating the contentions, we have examined the material on record. So far as the death of Kailash is concerned, it is clearly revealed from record that he sustained two grievous knife injuries on his person. PW-7 Dr. Jaipal has specifically stated that the injuries were ante-mortem in nature and were sufficient to cause death. Thus, the death of Kailash was homicidal and that has not been disputed by accused-appellant also. The finding of the trial court to this extent is liable to be maintained.

19. The first contention of learned counsel for the accused-appellant that the witnesses are the close relative of deceased and their statements are not trustworthy and no conviction could be based on their statements but in our opinion that merely the

witnesses are close relatives, their evidence cannot be discarded, however, in that position, their statements have to be read with extra care and caution for evaluating their evidentiary value. Much criticism has been placed with regard to PW-2 Bharat Kumar that he cannot be treated as an eye-witness but as per his statement, the presence of PW-2 cannot be said to be abnormal. He has stated that nearly 20-25 days ago, he received injury on his leg but no plaster of paris was done on his leg and he was in a position to move and run. He has further stated that he saw the accused causing two stab injuries to Kailash and on his raising shouts, Subash (PW-5), Laxman Das (PW-1) and Ganeshi Das (PW-6) came there. He has also stated that while the accused was running, he fell down but he again got up and could not be catch by them. He has further stated that when they were lifting Kailash to hospital, at that time, his cloths also got stained with blood which were recovered by the police vide Exh.P/7. The statement of PW-2 finds support from the statement of Investigating Officer (PW-10) and the medical evidence. He was confronted with his police statement (Exh.D/2). We have seen the relevant portion, the contradictions are of minor nature. He has also stated that PW-3 Suresh Kumar also came there and he corroborated the fact that when he reached on the spot, Kailash was lying on the ground and Bharat Kumar was lifting the injured to hospital. Thus, the presence of PW-2 Bharat Kumar

cannot be said to be concocted and his statement is reliable one. He has no enmity with the accused. Merely on the ground that he is relative of deceased, his evidence cannot be discarded/disbelieved. It is also revealed from record that PW-2 alongwith Ganeshi Das (father of deceased) went to report the matter at the Police Station and on their report (Exh.P/4) further investigation commenced. Therefore, the contention raised by the learned counsel for the appellant with regard to this witness is baseless. PW-1 Laxman Das, PW-5 Subash and PW-6 Ganeshi Das admitted in their statements that when they reached on the spot, at that time, Kailash was lying on the ground. Thus, they have not stated that they were the eye-witnesses of occurrence but they have stated that at that time they saw the accused was standing at a distance and he was having a blood-stained knife in his hand. They all tried to catch the accused but he managed to escape. They have also stated that while running, the accused fell down and received injuries. In this way, these witnesses are also supporting the prosecution case. Later on blood-stained knife was recovered at the instance and as per the information given by the accused, which further corroborates the prosecution story. Thus, the contention raised by the learned counsel for the appellant with regard to these witnesses is also baseless.

20. We have also considered the contention that PW-7 Dr. Jaipal, who has stated that there were two punctured wound over the body of deceased and the allegations are that the deceased was stabbed and in that case position of wound should have been stabbed wound but from the record it is clear that PW-7 was asked in this respect and vide Exh.P/10 he has explained the possibility at the same time if we look the size of the knife i.e. pointed from front side and 2 Cms in width. Thus, existence of such injuries are possible as admitted by PW-7. No question has been put to PW-7 in this respect from the side of the accused. Thus, the contention are having no force. It was also contended that injuries on the body of the accused has not been explained by the prosecution but it has not been established that they had been caused by the deceased. No witness has been produced in defence. On the contrary, prosecution witnesses have stated that when accused was running, he fell down and got injuries. Thus, the prosecution story can not be made doubtful on this count. The narration of injuries has also made in the arrest memo (Exh.P/22), therefore, it can be believed that the prosecution has not suppressed anything.

21. We have considered the contentions with regard to recovery of knife. PW-10 has stated that he arrested the accused on 20.5.2002 and on his information and at his instance blood-

stained knife was recovered on 21.5.2002 vide Exh.P/24 in presence of motbir witnesses. PW-4 Lalu Das has corroborated the same. The knife was sealed on the spot and remained intact in the Malkhana. The link evidence has been produced and as per FSL Report (Exh.P/30), blood on the knife belong to 'B' group, which was also found on the cloths of the deceased. Thus, the contentions are not tenable. One contention was also raised that motive to commit crime has not been proved but this contention is also not having force. The prosecution witnesses PW-1 and PW-2 have stated that on the eve of 'holi' the accused caught hold one girl to whom Kailash resisted and removed and on this count he was having enmity with Kailash. PW-2 Bharat Kumar is the eye-witness of occurrence and his statement is corroborated by other witnesses and medical report and recovery of weapon. In these circumstances the motive loses its importance and there is no suggestion that out of any enmity the accused has been falsely roped in the case.

22. It was also contended that FIR has been lodged after two hours of the occurrence but it is revealed from the record that the position of the injuries was very critical. The first duty of the Caretakers were to get treatment but when the doctor declared him dead, they have reported the matter. Written report has been submitted, thus, the contention that it was dictated by police is

baseless. The contention with regard to charge of Arms Act was also considered. In Notification dtd. 29.1.2000 under Section 4 of the Arms Act, the length of blade is prescribed 10.16 cms and the knife recovered from the accused is having blade of 16 cms. Thus, the contention is also having no force.

23. We have also considered the defence version. No evidence has been produced by the accused side. It has not been established that deceased-Kailash caused injuries to accused. The prosecution witnesses denied the suggestion that Kailash assaulted the accused. Thus, there is no room for doubt in the prosecution story. During the course of arguments learned counsel for the appellant placed reliance on : *(1) Mohar Singh & Ors. Vs. State of Punjab (AIR 1981 SC 1578)*. In that case, the accused assaulted the deceased with spade but the doctor who held the autopsy of the deceased clearly stated that the injuries could be caused only by a Kassi (pickaxe) the accused was given benefit of doubt in view of the glaring inconsistency between the ocular and medical evidence but in this case, Dr. Jaipal (PW-7) has explained and admitted the possibility, thus, does not help the appellant. *(2) Kathi Odhabhai Bhimabhai & Ors. Vs. State of Gujarat (1993 Crl. L.J. 187).* In that case, the statement of solitary witness conflicted with medical evidence, thus, his statement was not given implicit reliance but in

this case PW-2's statement found corroborated by medical evidence, thus also does not help. *(3) Patori Devi & Anr. Vs. State of Gujarat (AIR 1988 SC 560)*. The facts of this case are altogether different from that case. Version of eye-witnesses were not acceptable – Prosecution witnesses suppressed their own part and exaggerated the part played by accused – Prosecution also suppressed fact of causing injury to accused. Thus, this authority is not supporting the appellant. *(4) Masra & Ors. Vs. State of Rajasthan (2002 (2) Cr.L.R. [Raj.] 1403*. In that case the testimony of the two eye-witnesses was not found reliable and there was no corroboration of testimony of these witnesses and the recovered articles remained intact were not proved. The benefit of doubt was given but that is not the position in the present case, thus, these authorities do not help the appellant.

24. Thus, the contentions raised by the accused-appellant are not sustainable. We have seen the finding of the learned trial court. The learned trial court after considering the entire material available on record reached at reasoned conclusion. The accused-appellant has committed murder of Kailash by stabbing knife, which was recovered from his house at his instance. Thus, no interference is required. The charge of murder against the accused-appellant is proved beyond doubts. He has been rightly convicted and

sentenced for the charges levelled against him. The appeal deserves to be dismissed. Hence, appeal of the appellant is dismissed. The judgment and order of learned trial court is confirmed. The accused is in jail. He shall serve out his remaining part of sentence.

(MANAK MOHTA), J. **(N.N. MATHUR), J.**

Sanjay/-